

JOHN MINOR WISDOM

**HON. THOMAS E. PETRI**

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

*Monday, May 17, 1999*

Mr. PETRI. Mr. Speaker, John Minor Wisdom, an outstanding American, Judge, son of the South, and Republican passed on this weekend. I submit the following review of his eventful legal and political career which appeared in the New York Times today, to be entered in the RECORD at this point.

[From the New York Times, May 17, 1999]

JOHN MINOR WISDOM, APPEALS COURT JUDGE  
WHO HELPED END SEGREGATION, DIES AT 93

(By Jack Bass)

Judge John Minor Wisdom, the New Orleans legal scholar who wrote opinion after opinion that desegregated courthouses throughout the Deep South and put blacks on juries, in the voting booth, in state legislatures and in integrated classrooms, died on Saturday in New Orleans. He would have turned 94 today.

He had remained active in the 1990's, saying he had no interest in retirement.

Judge Wisdom wrote the opinion that allowed James Meredith to attend the University of Mississippi, the first black student to do so. In 1967 he wrote the majority opinion in *United States v. Jefferson County*, the case that, as he recalled, "really started affirmative action."

His wide-ranging judicial opinions over more than four decades kept public schools open in Louisiana when officials tried to close them rather than integrate, ordered Florida to desegregate even its reformatories and told sports authorities to desegregate the boxing ring.

He accomplished this after President Dwight D. Eisenhower named him in 1957 to the United States Court of Appeals for the Fifth Circuit, a jurisdiction that then including six states of the old Confederacy—Louisiana, Florida, Alabama, Mississippi, Texas and Georgia.

It was four judges of the Fifth Circuit whose opinions helped shape the civil rights laws of the 1950's and 60's, changing forever the Deep South. Judge Wisdom was the last survivor of the men who came to be called "the Four," a term used in a dissenting opinion by a fellow judge from Mississippi who saw them as destroyers of the Old South that he cherished. The others were Elbert P. Tuttle of Georgia, John R. Brown of Texas and Richard T. Rives of Alabama. All but Judge Rives were Republicans.

The judges of the Fifth Circuit amplified the mandate of *Brown v. Board of Education*, the epochal Supreme Court decision of May 17, 1954, that nullified state laws and state constitutional provisions allowing or requiring the segregation of black and white students in public schools because of their race. Among the Four's trail-blazing decisions of the 1960's, most of them written by Judge Wisdom, were the following:

In 1961, the judges struck down Louisiana's school-closing law, after St. Helena Parish voted to close its public schools rather than submit to desegregation.

In 1962, they agreed that James H. Meredith had been turned down for admission to the University of Mississippi because of his race, and ordered Ole Miss to admit him. In the court's opinion, Judge Wisdom wrote that university officials had "engaged in a carefully calculated campaign of delay, harassment and masterly inactivity." Mr. Meredith became the first black to go to public school with white students in accordance with the *Brown* decision.

In 1963, the judges ordered the desegregation of all public parks, playgrounds and community and cultural centers in New Orleans.

In 1964, they struck down the jury-selection system in Orleans Parish in Louisiana because, as Judge Wisdom wrote, it "operated to exclude all but a token number of Negroes" from jury lists. He noted that "no black ever sat on a grand jury or a trial jury panel in Orleans Parish."

In 1965, they ruled that Louisiana's voter-registration law, because of its written test on the Constitution, discriminated against poorly educated black voters. Judge Wisdom wrote: "A wall stands in Louisiana between registered voters and unregistered eligible Negro voters. The wall is the state constitutional requirement that an applicant for registration 'understand and give a reasonable interpretation of any section' of the Constitution of Louisiana or of the United States." It is, he wrote "the highest, best-guarded, most effective barrier to Negro voting in Louisiana."

He concluded that "this wall, built to bar Negroes from access to the franchise, must come down."

In 1966, the judges ordered Florida to desegregate its reformatories and declared no state could legally maintain segregation in any school, whatever its mission.

In 1967, they affirmed that the six states within their jurisdiction had to integrate their public schools from kindergarten on.

In 1968, Judge Wisdom made what he regarded as the most important opinion of his career, in *United States v. Jefferson*, in which the court overturned the so-called *Briggs* dictum. This was the belief, widely held by conservative judges in the South, that the Constitution did not require integration but merely forbade discrimination.

Judge Wisdom expressed his "nagging feeling that it is not how far blacks have come that is important but how far they will have to go." He advocated "the planned organized undoing of the effects of past segregation" and set in motion the philosophical framework for what would come to be known as affirmative action. He wrote: "To avoid conflict with the equal protection clause, a classification that denies a benefit, cause harm or imposes a burden must not be based on race. In that sense, the Constitution is color blind. But the Constitution is color conscious to prevent discrimination being perpetuated and to undo the effects of past discrimination. The criterion is the relevancy of color to a legitimate government purpose."

#### UNDOING THE YEARS OF 'INGENIOUS DEVICES'

The Fifth Circuit made these rulings at a time when die-hard segregationists were using everything from violence to subtle evasion to resist change.

"Our court rapidly desegregated every place that could be desegregated: buses, hotels, restaurants, parks, barrooms and athletic contests," Judge Wisdom recalled in 1982.

"Our court had strong opposition from six state legislatures and state governors, year in and year out."

"Senators, Congressmen, governors and local politicians eventually changed their attitude toward minorities," he continued. "This not attributable to a change of heart but to the Voting Rights Act of 1965," which, he noted, enfranchised blacks "previously disenfranchised by many ingenious devices."

President Clinton, in awarding him the Presidential Medal of Freedom in 1993, said that his opinions "advanced civil rights and economic justice, and his inspired words echo throughout many of this century's most significant Supreme Court opinions."

#### SON OF THE SOUTH WHO LOVED LITERATURE

John Minor Wisdom was born in New Orleans on May 17, 1905, the son of Mortimer M. Wisdom and Adelaide Labatt Wisdom. His father was a member of the city's elite and proudly remembered marching in the funeral procession of Robert E. Lee in 1870. In 1925 the son received his bachelor's degree from Washington and Lee University, where he had an interest in literature. He studied literature for a year as a graduate student at Harvard University, but then entered the law school at Tulane University, where he graduated first in his class.

He formed the law firm of Wisdom and Stone with a classmate, Saul Stone, practicing law in New Orleans in the 1930's. He joined the Army Air Forces in World War II, serving in the Office of Legal Procurement.

Some of his early legal work dealt with business law. He opposed so-called fair-trade laws, legislation that permitted manufacturers to set the retail prices of products, ostensibly to protect small retailers from competition from big discounters. He told those attending the American Fair Trade Council meeting in New York in 1953 that they could "never sell the American citizen on the justice or logic" of fair trade.

Mr. Wisdom, a long-time Republican loyalist who served in the 1950's as a national committeeman from Louisiana, worked hard to open doors to the party in the South. In 1952 he broke with the more traditional Southern Republicans, who strongly supported the candidacy of the conservative Senator Robert Taft of Ohio for President.

Earlier that year, Mr. Wisdom and Elbert P. Tuttle, a lawyer in Atlanta, met at the request of Herbert Brownell, General Eisenhower's campaign manager, to organize a campaign in the South to support General Eisenhower for the Republican nomination against Senator Taft. Mr. Wisdom and Mr. Tuttle became co-chairmen of the Southern Conference for Eisenhower.

As Attorney General in the Eisenhower Administration, Mr. Brownell became an important figure in selecting Federal judges, and both Mr. Tuttle and Mr. Wisdom were eventually put on the Federal bench.

One of the earliest civil rights cases Judge Wisdom received after his appointment came in 1959, when the Fifth Circuit voided a Louisiana ban on boxing matches between blacks and whites. The court's decision was upheld by the United States Supreme Court.

In 1964 he dissented from the Fifth Circuit's majority opinion, which upheld the tradition of revealing the race of all candidates for public office on the ballot. The Supreme Court ultimately repudiated the majority decision and upheld his position.

Though most of the Fifth Circuit's groundbreaking decisions concerning discrimination were made in the 1960's, there were many significant cases in the 1970's. Among them was a 1972 decision striking down a Louisiana law barring biracial adoptions. "It's obvious," Judge Wisdom wrote in the decision, "that the Louisiana statute making race a decisive factor in adoption subordinates a child's best interest in some circumstances to racial discrimination."

Judge Wisdom wrote several landmark opinions in employment discrimination cases. In 1979, the Supreme Court adopted the basic reasoning of his dissent in *Weber v. Kaiser Aluminum and Chemical Corporation* to uphold a hiring plan intended to overcome the effects of past discrimination.

Not all his major decisions concerned race. In 1974, he wrote an opinion that found that psychiatric patients as a class had a Federal constitutional right to adequate treatment when such patients were committed against their will to state institutions.

But to the end he felt that no opinion drew more fully on his intellect and imagination than *U.S. v. Jefferson*. By requiring "the organized undoing of the effects of past desegregation," he placed an affirmative duty on school boards to develop desegregation plans. Including a model desegregation order, he served notice that "the only school desegregation plan that meets constitutional standards is one that works."

Judge J. Harvie Wilkinson of the Fourth Circuit Court of Appeals wrote in a 1979 book, "The Supreme Court wrote from *Brown to Bakke*," that Judge Wisdom in *Jefferson* and related cases "transformed the face of school desegregation law."

#### A SCUTTLED CANDIDACY FOR THE SUPREME COURT

Despite the storms that attended his civil rights decisions, the stature he attained was such that in 1969, he was mentioned as a leading candidate for the Supreme Court. Moderate Republicans advanced his name after the Senate rejected President Richard M. Nixon's nomination of Judge Clement F. Haynsworth, whom Judge Wisdom opposed.

But Mr. Nixon's Attorney General, John Mitchell, scuttled the idea, reportedly complaining that Judge Wisdom was nothing more than a "damn left-winger" who, if he ever got on the Supreme Court, would "be as bad as Earl Warren."

The judge once told a reporter that when the Fifth Circuit was issuing its most contentious rulings, his dogs were poisoned and a rattlesnake was thrown in his backyard.

But despite the liberal views about race and civil rights he espoused throughout his

judicial career, he maintained memberships in private clubs that discriminated against blacks and Jews.

"The people I see in these clubs are the guys I went to school with and have known all my life," he said. "I would not resign from any such club." He said, "They know how I stand on these matters" and "I certainly wouldn't change their views by getting out of the club."

He is survived by his wife, Bonnie Mathews Wisdom, and two daughters, Kathleen Mathews Wisdom and Penelope Stewart Wisdom Tose. A son, John Minor Jr., died.

His former law clerks recalled that the judge was capable of spending an afternoon playing bridge for high stakes, following it with drinks with lifelong friends, discussing and reciting obscure Elizabethan poetry, and after cocktails and dinner at home, staying up well past midnight working on one of the many drafts his major opinions went through before he was satisfied.

#### IN RECOGNITION OF MR. TURNER KING, SR.

#### HON. RONNIE SHOWS

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

*Monday, May 17, 1999*

Mr. SHOWS. Mr. Speaker, I rise today to recognize the outstanding achievements of Mr. Turner King, Sr., a member of New Hope Mis-

sionary Baptist Church in Southaven, Mississippi.

Mr. King, now 84 years young, was born in Nesbit, Mississippi and married the late Mrs. Rennell Bridgforth King. Mr. King supplemented his farming income by becoming a self-taught tailor, and by so doing he and his wife were able to provide education for their seven children, a niece and a nephew.

Della Mae King Sutton, a retired teacher, received her Bachelor's Degree from Mississippi Industrial College in Holly Springs. Turner King, Jr., now deceased, attended college for two years. Irene King McNeil, a teacher, earned her Bachelor's Degree at Mississippi Valley State University in Itta Bena. Earning their degrees at Rust College in Holly Springs include teachers Margaret King and Lerah Yvonne King Macklin, and Doris Ann King, who is in the banking business. Niece Marilyn Clarice Young White attended the University of Mississippi at Oxford for 3½ years and nephew Donald Ray Young graduated from Southaven High School.

Mr. Speaker, through hard work and determination, Mr. and Mrs. Turner King raised a fine family that has contributed much to our state. Turner King, Sr. and the late Mrs. King are role models for us all. I am proud to share with my colleagues in Congress this tribute to Turner King and the entire King family.